

## **REMARKS**

Claims 1, 15 and 29 have been amended. Claims 1-42 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

### **Provisional Double Patenting Rejection:**

The Examiner provisionally rejected claims 13, 14, 27, 28, 41 and 42 under 35 U.S.C. § 101 in regard claims 8, 17, 27, 36, 46 and 55 of U.S. Application number 10/670,849, and claims 12 and 26 over claims 26 and 18 of U.S. Application number 10/670,849. Withdrawal of this rejection is respectfully requested in light of the above amendments.

### **Section 101 Rejection:**

The Examiner rejected claims 1-12, 15-26 and 31-39 under 35 U.S.C. § 101 as being drawn towards non-statutory subject matter. Applicant traverses this rejection for at least the following reasons.

Regarding the Examiner's assertion that Claim 1 does not, "cause the system to do work". Clearly, detecting a computer system activity level requires the system to do work. There is nothing abstract about detecting a computer system activity level. Transitioning a presence state from a non-busy state to busy state requires the system to do work. Comparing the current computer system activity level against an activity threshold level causes the system to do work. These are all very well defined acts that require the system to, "do work." They are not abstract. The tangible result is an accurate presence state that reflects the current system activity.

Therefore, the Examiner has failed to explain how claim 1 covers a law of nature, natural phenomena or abstract idea. According to the current Guidelines, the "useful, concrete and tangible result" analysis **only applies if the Examiner has first established**

**a prima facie case that the claimed invention claimed invention covers a law of nature, natural phenomenon or abstract idea.** See Guidelines IV.C.1. Since the Examiner has never explained how the invention of claim 1 covers a law of nature, natural phenomenon or abstract idea, **the Examiner has failed to state a proper rejection.**

Furthermore, contrary to the Examiner's assertion, the Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility does not state that to be statutory a claim must explicitly recite that a result is output to a user, or displayed to a user.

The applicants assert that the same arguments used for Claims 1-12 above apply to claims 15-26 and 31-39.

#### **Section 102(b) Rejection:**

The Examiner rejected claims 1, 3, 6, 7, 10, 15, 17, 20, 21, 24, 29, 31, 34, 35 and 38 under 35 U.S.C. § 102(b) as being anticipated by Aravamudan, et al. (U.S. Patent 6,301,609) (hereinafter "Aravamudan"), and claims 1, 2, 4, 6-8, 9, 12-15, 18, 20-23, 27-29, 32, 34-36 and 37 as being anticipated by Horvitz (PCT Application WO 01/69387).

**The cited references do not disclose transitioning a presence state specific to an instant messenger client to a busy state in response to determining that said activity level exceeds said activity threshold.** Instead, Aravamudan determines the busy state of Client Premises Equipment (CPE) and the Communication Services Platform (CSP) software and uses a server to store an activity state. The busy state in Aravamudan is in regard to the Client Premises Equipment (CPE) in general and is not specific to the user's instant messenger client.

The Examiner states that Horvitz discusses "*predetermined thresholds*" and

*“attentional focus”* in order to determine *“whether the user is currently amenable to receiving notification alerts”*. However, when Horvitz uses the term, *“predetermined threshold”*, he is referring to comparing the **priority of the item being delivered for communications** to a predetermined threshold. He is not referring to a computer system activity level *“predetermined threshold.”* Horvitz is comparing a value given to the **priority of an item to be delivered for communications** to a predetermined threshold, which is clearly different than comparing **computer system activity level to a predetermined threshold**.

Horvitz does mention *“attentional focus”*, however, it has nothing to do with instant messaging and was taken out of context by the Examiner. The entire quote cited by the Examiner reads, *“However, if the user is currently talking on the cell phone 114, this can indicate that the user has his or her attentional focus on something else (namely, the current phone call), such that the user should not presently be disturbed with a notification alert.”* Applicant asserts that Horvitz’s description of attentional focus regarding cell phones has no bearing on Applicant’s claims.

Like Aravamudan, Horvitz does not disclose **“...transitioning a presence state specific to an instant messenger client to a busy state...”** Although Horvitz does mention the use of a keyboard to determine if the user is currently typing and may be focused on a computer activity, this in no way teaches all of the limitations of claim 1. **Horvitz does not link the detection of keyboard activity to the transition of a busy state specific to an instant messenger client.**

Therefore, for at least the reasons above, Applicants assert that the rejection of independent claims 1 is not supported by the cited art, and removal thereof is respectfully requested. Similar arguments apply in regard to independent claims 15 and 29.

**In regard to claim 9, Horvitz does not teach that the activity threshold is configurable by a user.** The context specifications selectable by a user described on p. 19 of Horvitz are not thresholds for a computer system activity level. The threshold cited

by the Examiner on p. 20 of Horvitz refers to a priority threshold for a communication, not a threshold for a computer system activity level. The reference to “typing very quickly” on p. 21 in not describes as user configurable. Nowhere for Horvitz describe a user configurable threshold for a computer system activity level.

**Section 103(a) Rejections:**

The Office Action rejected claims 4, 8, 9, 11, 18, 22, 23, 25, 32, 36, 37 and 39 under 35 U.S.C. § 103(a) as being unpatentable over Aravamudan in view of Horvitz (U.S. Patent 6,622,160) (hereinafter “Horvitz ‘160”), claims 5, 19 and 33 as being unpatentable over Aravamudan in view of Desimone, et al. (U.S. Patent 6,212,548) (hereinafter “Desimone”), claims 16 and 30 as being unpatentable over Aravamudan in view of McDowell, et al. (U.S. Publication 2002/0035605) (hereinafter “McDowell”) and Horvitz ‘160, claim 12 as being unpatentable over Aravamudan in view of McDowell.

Applicants traverse these rejections for at least the reasons stated above in regard to the independent claims.

## **CONCLUSION**

Applicants submit the application is in condition for allowance, and an early notice to that effect is requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-69700/RCK.

Respectfully submitted,

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